

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

RICCO COATES,

Plaintiff,

vs.

NATIONAL GEOGRAPHIC,

Defendant.

CV-14-70-GF-BMM

ORDER

Plaintiff Ricco Coates (Coates) is a prisoner in the Montana State Prison in Deer Lodge, Montana. Coates filed a Complaint *pro se* on September 18, 2014. The Complaint alleges that Defendant National Geographic violated his Fourth Amendment right to privacy in contravention of 42 U.S.C. § 1983 by videotaping his arrest in a public parking lot, and airing a recording of the arrest on a television program about illegal drugs in Montana.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on February 5, 2015. (Doc. 9). Judge Johnston recommended that the Complaint be dismissed because it failed to state a claim under § 1983. (Doc. 9 at 2-3). Coates did not file objections to Judge Johnston's Findings and Recommendations.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege: 1) that a right secured by the Constitution or laws of the United States was violated, and 2) that the violation was committed by a person or entity acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988). Coates has failed to allege a Fourth Amendment violation based upon an invasion of privacy. The events recorded by National Geographic occurred in the open, in a public parking lot. The United States Supreme Court has stated that "[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." *Katz v. United States*, 389 U.S. 347, 351 (1967); *see also*, *State v. Ditton*, 144 P.3d 783, 791 (Mont. 2006).

Accordingly, IT IS ORDERED:

1. Plaintiff's Complaint (Doc. 2) is DISMISSED with prejudice.
2. The filing of this action counts as one strike for failure to state a claim. 28 U.S.C. § 1915(g).
3. Any appeal of this decision would not be taken in good faith as Plaintiff's claim is frivolous.

4. The Clerk is directed to enter judgment accordingly.

DATED this 7th day of April, 2015.

A handwritten signature in blue ink, reading "Brian Morris". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Brian Morris
United States District Court Judge